

**INTHEUNITEDSTATESDISTRICTCOURT  
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

BARRYMAPP,byhisparentandnextfriend,	:	
NicoleCogdell,andNICOLECOGDELL,	:	CIVILACTION
individuallyandasthemotherofBarryMapp,	:	
Plaintiffs,	:	
	:	NO:99-4440
v.	:	
	:	
WILLIAMPENNSCHOOLDISTRICT,etal.,	:	
Defendants.	:	

**MEMORANDUM-ORDER**

**GREEN,S.J.**

**May25th ,2001**

PresentlybeforetheCourtaretwomotions:(1)theDefendants’<sup>1</sup>MotiontoDismiss  
Plaintiffs’SecondAmendedComplaint,<sup>2</sup>thePlaintiffs’response<sup>3</sup>,andtheDefendants’reply;  
and,(2)Plaintiffs’MotionforanOrderDirectingRedactionofDefendants’Pleadings,and  
Defendants’Response.Forthefollowingreasons,Defendants’motiontodismisswillbe

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<sup>1</sup>DefendantsintheinstantactionaretheWilliamPennSchoolDistrict,Dr.James  
O’Toole,Dr.GertrudeBennettandThomasBradley.

<sup>2</sup>Defendants’MotiontoDismisscontains elevenexhibits.However,asPlaintiffsnote,  
DefendantsdidnotmoveforsummaryjudgmentunderRule56.Rather,Defendantsmovedto  
havePlaintiffs’SecondAmendedComplaintdismissedpursuanttoRule12(b)(6),amongother  
rules. See Pltfs.’Resp.toMotiontoDismiss at1n.1.Ifacourtacceptstheseeexhibits,of  
course,themotionunder12(b)(6)istobetreatedasoneforsummaryjudgment,andcontrolled  
bytheprovisionsofRule56. SeeFed.R.Civ.P.12(b); **Dfdts.’Sur-reply** at6.SinceIhavenot  
reliedonDefendants’exhibitsinmyconsiderationofDefendants’motion,itisunnecessaryto  
reachthisissue,andIwillbeguidedbytherulescontrollingRule12(b)(6).

<sup>3</sup>Plaintiffs’reponsealsocontainedseveral“motions”whichPlaintiffswishedtheCourt  
toconsider. See Pltfs.’Resp.toMotiontoDismiss at4-10.However,asthe“motions”didnot  
complywiththe“FormofMotions”requirementsofFederalRuleofCivilProcedure7(b)and  
LocalRuleofCivilProcedure7.1,theyarenotproperlybeforetheCourt,andhavenotbeen  
considered.ItshouldbenotedthatPlaintiffsdidfileaseparateMotionforanOrderDirecting  
RedactionofDefendants’Pleadings,eventhoughthiswasoneofthe“motions”listedintheir  
response.This seemstoindicatePlaintiffs’realizationoftheinfirmitiesoftheirpreviousattempt  
tofilea“motion”onthisissue,andonlythisformalmotionwillbereviewed.

granted, and Plaintiffs' motion for an order directing redaction of Defendants' pleadings will be denied.

## **I. Factual and Procedural Background**

The detailed facts of this matter have been set out in an earlier Memorandum/Order of this Court and need not be recited. See Mapp v. William Penn School Dist., No. CIV. A. 99-4440, 2000 WL 1358484 (E.D. Pa. Sept. 18, 2000). The Order dismissed Plaintiffs' Amended Complaint without prejudice, and Plaintiffs were given twenty days in which to file a Second Amended Complaint. Plaintiffs filed their Second Amended Complaint on October 10, 2001. Defendants then filed the instant motion, asking the Court to dismiss Plaintiffs' Second Amended Complaint pursuant to the following Federal Rules of Civil Procedure: (1) Rule 6(b), for failure to file the Second Amended Complaint timely; (2) Rule 41(b), as a sanction against Plaintiffs for failure to adhere to court rules and orders; (3) Rule 12(b)(1), for lack of subject matter jurisdiction; and, (4) Rule 12(b)(6), for failure to state a cause upon which relief can be granted. Plaintiffs argue that their Second Amended Complaint complies with the earlier Order of this Court, and should not be dismissed.

Plaintiffs then filed a motion asking the Court to either strike Defendants' motion to dismiss, or order that certain parts of the motion be redacted, because the motion contains the names of several students unassociated with this proceeding. Plaintiffs argue that the use of these names is a violation of the rights of those students, and is in contravention of the Family Education Records Privacy Act ("FERPA"). Defendants respond that the Plaintiffs lack standing to raise the issue of an alleged FERPA violation, and that, regardless, Defendants' actions do not amount to a FERPA violation.

## II. Legal Standard

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because granting such a motion results in a determination on the merits at an early stage of Plaintiffs' case, the district court "must take all the well-pleaded allegations as true, construe the complaint in the light most favorable to the [Plaintiffs], and determine whether, under any reasonable reading of the pleadings, the [Plaintiffs] may be entitled to relief." Colburn v. Upper Darby Twp., 838 F.2d 663, 664-65 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989).

## III. Discussion

### A. Plaintiffs' Second Amended Complaint.

While Plaintiffs' Second Amended Complaint attempts to present the issues somewhat differently than Plaintiffs' earlier complaints, it suffers from the same deficiencies. The claims made by Plaintiff Barry Mapp have still not been exhausted, and must be dismissed in their entirety for the same reasons as in the earlier Order of this Court. See Mapp v. William Penn School Dist., No. CIV. A. 99-4440, 2000 WL 1358484, at \*3-4 (E.D. Pa. Sept. 18, 2000). Similarly, for the same reasons expressed in the earlier Order of this Court, Nicole Cogdell has failed to set forth allegations sufficient to state causes of action for all of her claims. See Mapp v. William Penn School Dist., No. CIV. A. 99-4440, 2000 WL 1358484, at \*4 (E.D. Pa. Sept. 18, 2000). Because Plaintiff has merely re-stated the same claims which were dismissed in the earlier Order of this Court, the entire Second Amended Complaint will be dismissed with prejudice.

B. Plaintiffs' motion under FERPA.

Plaintiffs ask the Court to either strike or order the redaction of several exhibits which Defendants have attached to their motion to dismiss. Plaintiffs argue that the exhibits impermissibly contain records of several students. None of these other students are parties to this litigation, and, upon information and belief, Plaintiffs aver that the records have been filed "without the permission of the students' parents and/or guardians." See Pltfs.' Motion to Strike at 2. Plaintiffs contend that Defendants' actions are in violation of The Family Education Records Privacy Act ("FERPA"), 20 U.S.C. § 1232(g), and the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq*. However, Plaintiffs' motion has failed to cite the specific provisions of any federal law on which they base their prayer for relief. Plaintiffs have also failed to cite any case law or other legal support, or make any cogent argument, for their request. Finally, Plaintiffs have failed to show that they have standing under either FERPA or IDEA to even present this matter to the Court. <sup>4</sup>Therefore, Plaintiffs' motion will be denied.

**IV. Conclusion**

For the reasons set forth above, I will dismiss Plaintiffs' Second Amended Complaint, with prejudice. Also Plaintiffs' motion asking for an order to strike Defendants' exhibits will be denied. An appropriate order follows.

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<sup>4</sup>If, *arguendo*, Defendants have violated these students' rights under either FERPA or IDEA, and if a redacted version of the Defendants' exhibits is proper, the Plaintiffs' current motion is the incorrect tool for this action.